

DOGE 2008

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ORLY CALDERON,

Plaintiff,

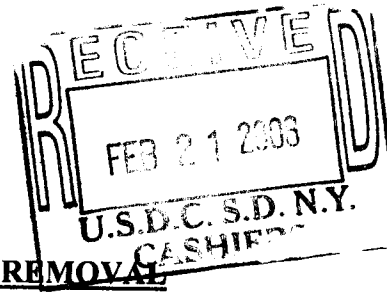
v.

THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA,

Defendant.

08 CV 01721

CASE NO.:



**DEFENDANT'S NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, by and through counsel, hereby remove this action from the Supreme Court of the State of New York, County of Bronx (the "State Court") to this Court. The grounds for removal are as follows:

1. Plaintiff commenced this action by filing a Complaint docketed at No. 300080/08 in the State Court on or about January 7, 2008. Defendant first received a copy of the Complaint on January 22, 2008. This Notice of Removal is timely filed with this Court, pursuant to 28 U.S.C. § 1446(b), because thirty days have not expired since this action became removable to this Court.
2. Attached as Exhibit 1 are all of the process, pleadings and other documents served thus far in this action. No other proceedings have occurred in this action.
3. In her Complaint, Plaintiff seeks life insurance benefits under the terms of an employee benefit plan governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.*
4. Because Plaintiff's claims relate to the payment of benefits pursuant to an employee benefit plan governed by ERISA, the federal courts have original jurisdiction over this matter

pursuant to 28 U.S.C. §§ 1331, 1367 and 29 U.S.C. § 1132(e). ERISA preempts any state law claims and causes of action and provides exclusive federal remedies for resolution of claims relating to plan benefits. *See also Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 67 (1987) (“Accordingly, this suit, though it purports to raise only state law claims, is necessarily federal in character by virtue of the clearly manifested intent of Congress. It therefore arise[s] under the . . . laws . . . of the United States, 28 U.S.C. § 1331, and is removable to federal court by the defendants, 28 U.S.C. § 1441(b).”).

5. This Court has original jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1331.

6. This Court has supplemental jurisdiction over Plaintiff’s breach of contract (insurance policy) claim pursuant to 28 U.S.C. § 1367(a) because the state law claim is so related to and based upon the payment of benefits under an ERISA plan that they form part of the same case or controversy.

7. The Notice of Filing of Notice of Removal is attached hereto as Exhibit 2.

WHEREFORE, Defendant respectfully requests the removal of this action to the United States District Court for the Southern District of New York.

Dated: February 21, 2008

Respectfully submitted,



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Brian A. Herman (BH-0731)  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, New York 10178  
(212) 309-6909  
(212) 309-6001

Attorneys for Defendant

*Of Counsel:*

Miriam G. Bahcall, Esq.  
Beth A. Black, Esq.  
Morgan, Lewis & Bockius LLP  
77 West Wacker Drive, 5th Floor  
Chicago, Illinois 60601  
(312) 324-1000  
(312) 324-1001 (fax)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
ORLY CALDERON,

Plaintiff,

-against-

PRUDENTIAL INSURANCE COMPANY  
OF AMERICA,

Defendant.  
-----X

TO THE ABOVE NAMED DEFENDANTS:

Index No.

300080 / 08  
Plaintiff designates  
Bronx County as the  
place of trial

The basis of the  
venue is Plaintiff's  
Residence

SUMMONS

Plaintiff resides at  
2600 Netherland Avenue  
Riverdale, NY 10463

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Garden City, New York  
January 3, 2008

DATE FILED:

JAN. 7, 2008

By: \_\_\_\_\_

Jules A. Epstein  
JULES A. EPSTEIN, P.C.  
Attorneys for Plaintiff  
600 Old Country Road, Suite 505  
Garden City, New York 11530  
(516) 745-1325

NOTE: The law or rules of court provide that:

- (a) if this summons is served by its delivery to you, or (for a corporation) an agent authorized to receive service, personally within the County of Nassau you must answer within twenty (20) days after such service; or
- (b) if this summons is served otherwise than as designated in subdivision (a) above, you are allowed thirty (30) days to answer after the proof of service is filed with the Clerk of this Court.
- (c) You are required to file a copy of your answer together with proof of service with the Clerk of the district in which the action is brought within ten (10) days of the service of the answer.

Defendant's Address:  
751 Broad Street  
Newark, NJ 07102

C:\Documents and Settings\All Users\Documents\WPDOCS\Calderon\Summons upd

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X Index No. 300080/08  
ORLY CALDERON,

Plaintiff,

-against-

PRUDENTIAL INSURANCE COMPANY  
OF AMERICA,

CORRECTED  
VERIFIED COMPLAINT

Defendant.

-----X

S I R S :

PLEASE TAKE NOTICE that Plaintiff, by her attorneys JULES A. EPSTEIN, P.C., complaining of the defendant alleges:

1. At all relevant times, Plaintiff was and is a resident of the State of New York, County of Bronx.
2. At all relevant times, Defendant was and is a foreign corporation authorized to do business in New York, and engaged in the business of issuing life insurance policies.
3. At all relevant times, Defendant was and is authorized to issue life insurance policies in the State of New York by the New York State Superintendent of Insurance.
4. Prior to March 4, 2006, for a good and valuable consideration, Defendant issued its policy of insurance #G-4442 insuring the life of Abraham Abramovsky, Social Security #128-38-9296 (the "Policy").
5. Upon information and belief, the Policy provides for death benefits to be paid to the beneficiaries designated by the insured, Abraham Abramovsky, in the amount of \$175,000.

6. On or about March 4, 2006, Abraham Abramovsky executed and delivered to Defendant a beneficiary designation on the standard form provided by Defendant (the "Beneficiary Designation"). A true copy of the Beneficiary Designation is annexed as Exhibit "1".

7. The Beneficiary Designation provides for Plaintiff to receive twenty (20%) percent of the benefits payable under the Policy upon Abraham Abramovsky's death.

8. Abraham Abramovsky died a resident of the State of New York on July 23, 2007.

9. At the time of Abraham Abramovsky's death, all premiums payable for the Policy were paid, and the Policy was in full force and effect at the time of Abraham Abramovsky's death.

10. Plaintiff gave Defendant notice and proof of Abraham Abramovsky's death.

11. Prior to the commencement of this action, Plaintiff duly delivered to Defendant her demand for payment of twenty (20%) percent of the death benefit proceeds of the Policy in accordance with the Beneficiary Designation form annexed as Exhibit "2".

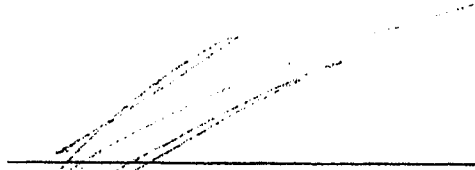
12. No part of the twenty (20%) percent death benefits payable to Plaintiff have been paid to her despite due demand.

13. By virtue of the foregoing, Defendant has breached its policy of insurance insuring the life of Abraham Abramovsky.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of \$35,000, or such other sum as determined by the Court, together with interest and the costs and disbursements of the action.

Dated: Garden City, New York  
January 3, 2008

Yours, etc.,



---

Jules A. Epstein, Esq.  
JULES A. EPSTEIN, P.C.  
*Attorney for Plaintiff*  
600 Old Country Road, Suite 505  
Garden City, NY 11530  
516-745-1325



VERIFICATION

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF NASSAU     )

The undersigned, an attorney admitted to practice in the Courts of New York, respectfully affirms under oath:

That deponent is the attorneys of record for Plaintiff in the within action. Deponent has read the foregoing COMPLAINT in the within action and upon information and belief, deponent believes the contents thereof to be true.

The grounds of deponent's beliefs are communications with the Plaintiff.

This verification is made by deponent and not by Plaintiff because Plaintiff is out of the county where deponent maintains his office.

Dated: Garden City, New York  
January 2, 2008

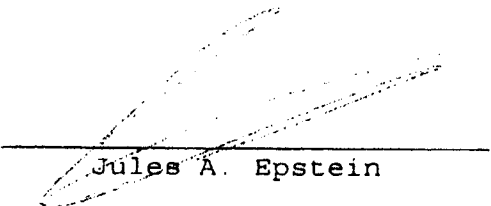
  
\_\_\_\_\_  
Jules A. Epstein

EXHIBIT "1"

02/21/2008 14:29 FAX 718 817 4929

FORDHAM UNIVERSITY

002

**Beneficiary Designation - Fordham University****Control # 4442**

<b>Employee General Information</b>						
Last Name	First Name	Middle Initial	Social Security No			
Abramovsky	Abram		112-38-9296			
<b>Beneficiary Designation</b>						
If more than one beneficiary is desired, please write their name(s) and relationship(s) on the lines below. If more than one primary beneficiary is designated, settlement will be made in equal shares to the designated beneficiaries (or beneficiary) who are then still living, unless their shares are specified. If no named beneficiary, or no beneficiary survives the insured, settlement will be made in accordance with the terms of your Group Contract.						
<b>Basic Term Life and AD&amp;D - Primary Beneficiary Designation</b>						
(1) Last Name	First Name	Middle Initial	Social Security No.	Relationship	Percentage	
Calderson	Orly		111 72 0762	friend	20%	
Address: 2600 Netherland Ave #1825 Riverdale NY 10463						
(2) Last Name	First Name	Middle Initial	Social Security No.	Relationship	Percentage	
Ariva	Abramovsky		273203604	Daughter	20%	
Address: 411 Crawford Ave. Syracuse NY 13224						
<b>Basic Term Life and AD&amp;D - Contingent Beneficiary Designation</b>						
(1) Last Name	First Name	Middle Initial	Social Security No.	Relationship	Percentage	
Abramovsky	ABRA	2	057742666	Son	20%	
Address: 154 W. 70 St # 12-H NYC NY 10023						
(2) Last Name	First Name	Middle Initial	Social Security No.	Relationship	Percentage	
Abramovsky	Dev.		097745618	Son	20%	
Address: 301 E 22 St NYC NY						
<b>Employee Signature</b> <u>Abram Abram</u> <b>Date (Month, Day, Year)</b> <u>3/4/06</u> If you have any questions, please see Human Resources for details.						

The Prudential Insurance Company of America, 751 Broad Street, Newark, NJ 07102. Life Claims: 1-800-524-0542. Prudential Financial and the Rock logo are registered service marks of The Prudential Insurance Company of America and its affiliates.

**Prudential Financial**

GL 2005 289

Ed.8/2005

ECEd.12.2005-0487

EXP.6.2007

\* Abramovsky Ari SSN# 097745618 son, 20%  
 411 Crawford Ave. Syracuse<sup>2</sup> NY 13224

**EXHIBIT "2"**

02/17/2008 09:10 FAX (718) 517-4829

DURHAM UNIVERSITY

0002

# Prudential Financial

## Beneficiary Statement

Each beneficiary should complete Sections 1, 2, and 3. If accidental death or Business Travel Accident benefits are being claimed, Section 4 should also be completed. Return the form to the deceased's Employer/Plan Administrator.

<b>1</b> Deceased's Information	First Name	MI	Last Name
	Abraham		Abrahamovich
	Social Security Number		
	128	38	9296

<b>2</b> Beneficiary's Information	First Name	MI	Last Name		
	Orly		Calderson		
	Street				
	2600	Netherland	Ave		
	City	State	ZIP Code		
	Riverdale	NY	10963		
Telephone Number	Date of Birth (mm dd yyyy)				
718	796	8616	10	26	1962

<b>3</b> Taxpayer Identification Number and Certification	Prudential requires your Taxpayer Identification Number. The Taxpayer Identification Number is either the Social Security Number or the Employer Identification Number. If you:
	<ul style="list-style-type: none"> <li>are an individual, your Taxpayer Identification Number is the Social Security Number.</li> <li>represent a trust or estate, the Taxpayer Identification Number is its Employer Identification Number.</li> <li>represent a minor, please provide the minor's Social Security Number.</li> <li>are applying for a Taxpayer Identification Number, please write "applied for" in the space provided.</li> </ul>

### TAXPAYER IDENTIFICATION NUMBER/FORM W-9 CERTIFICATION:

Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number (Social Security Number). I further certify that the citizen/residency status I have stated on this form is my correct citizen/residency status. I am not subject to backup withholding because (a) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding, (b) the IRS has told me that I am no longer subject to a backup withholding order, or (c) I am exempt from backup withholding.

Social Security Number or Taxpayer Identification Number of beneficiary 111 72 0762

Check here only if you are subject to backup withholding:

- ☐ I have been notified by the Internal Revenue Service that I am subject to backup withholding due to underreporting of interest or dividends.
- ☐ I am not a U.S. person (including resident alien). I am a citizen of   
(Attach completed IRS Form W-BEN, if applicable)

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

X

Signature

Date (mm dd yyyy)

09 17 2007



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

Index No.

ORLY CALDERON,

Plaintiff,

-against-

PRUDENTIAL INSURANCE COMPANY OF AMERICA,  
Defendant.

SUMMONS AND COMPLAINT

JULES A. EPSTEIN, P.C.  
Attorney for Plaintiff  
600 Old Country Road, Suite 505  
Garden City, NY 11530  
(516) 745-1325  
(516) 222-1499 (Fax)

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: 1/2/08

Signature

Print Signer's Name JULES A. EPSTEIN

Service of a copy of the within is hereby admitted

Dated,

Attorney(s) for Defendants

SIR: PLEASE TAKE NOTICE

NOTICE OF that the within is a (certified) true copy of a  
ENTRY entered in the office of the clerk of the within named Court  
on 2004

NOTICE OF that an Order of which the within is a true copy will be  
SETTLEMENT presented for settlement to the one of the  
judges of the within named Court, at 100 Supreme Court Drive,  
Mineola, NY on , at 9:30 A. M.

Dated:

Yours, etc.,  
Jules A. Epstein, P.C.  
Attorney for Plaintiff  
600 Old Country Road, Suite 505  
Garden City, NY 11530  
(516) 745-1325  
(516) 222-1499 (Fax)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
ORLY CALDERON,

Plaintiff,

-against-

PRUDENTIAL INSURANCE COMPANY  
OF AMERICA,

Defendant.  
-----X

Index No. 300080/08

**NOTICE OF FILING OF NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1446(d), Defendant files herewith a copy of the Notice of Removal filed by it in the United States District Court for the Southern District of New York on February 21, 2008. A certified copy of the Notice of Removal will be filed upon receipt from the federal court.

Dated: February 21, 2008

Respectfully Submitted,



\_\_\_\_\_  
Brian A. Herman (BH-0731)  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, New York 10178  
(212) 309-6909  
(212) 309-6001

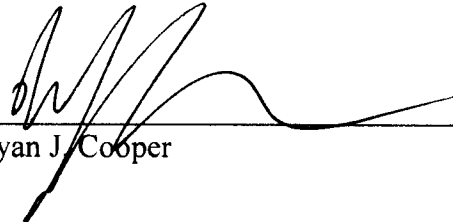
*Of Counsel:*

Miriam G. Bahcall, Esq.  
Beth A. Black, Esq.  
Morgan, Lewis & Bockius LLP  
77 West Wacker Drive, 5th Floor  
Chicago, Illinois 60601  
(312) 324-1000  
(312) 324-1001 (fax)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies on February 21, 2008, the foregoing Defendant's Notice of Removal was filed with the clerk of the Court and that a copy of Defendants' Notice of Removal was served via first class mail, upon the following:

Jules A. Epstein, Esq.  
Jules A. Epstein, P.C.  
600 Old Country Road, Suite 505  
Garden City, New York 11530

  
\_\_\_\_\_  
Ryan J. Cooper